(1) Supreme Court, U.S.
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No. 02 A 782

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IN THE

SUPREME COURT OF THE UNITED STATES

JOHN N. FISHER, petitioner

v

MICHIGAN, respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE U.S. COURT OF APPEALS FOR
THE 6TH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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39 pp

QUESTIONS PRESENTED

Question I

Was the state court conviction and sentence of defendant (petitioner herein) repugnant to the United States Constitution?

Question II

Was the deprivation of defendant's right of appeal in the state court system repugnant to the United States Constitution?

Question III

Was the deprivation of defendant's right to a writ of habeas corpus by both lower Art. III courts null and void or clearly erroneous?

Question IV

Was the narrow construction given to 28 U.S.C. Sec. 2254(a) by both lower Art. III courts of repugnant to the United States Constitution?

Question V

Was the deprivation of defendant's right to a certificate of appealability by both lower Art. III courts null and void or clearly erroneous?

PARTIES TO THE PROCEEDINGS

In the state court system, the proceeding was criminal; the State of Michigan was plaintiff and petitioner herein was defendant

In the two lower Art. III courts, petitioner herein was plaintiff; the following were defendants: (i) Oakland County Sheriff; and (ii) Michigan Attorney General.

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Now comes petitioner and requests that this Court issue a writ of certiorari to the U.S. Court of Appeals for the Sixth Circuit to correct its manifest and gross error in the instant case.

OPINIONS BELOW

Documents A through D in the attached Appendix are orders in the state court system.

Documents E through J in said Appendix are orders in the federal court system.

No opinions separate from the orders were issued in either court system, nor was any such opinion published.

In violation of his U.S. Constitutional rights (Ams. 5, 6 and 14), defendant, in the state court system (petitioner herein) was illegally convicted in the trial court of a false charge [the felony crime of larceny in a building (MCL 750.360)]. In point of fact, he was a misdemeanant shoplifter who had violated MCL 750.356d(4), the penalty for which is a misdemeanor.

Defendant was denied a discretionary appeal in each of the two tiers of appellate courts in the state system.

In violation of his U.S. Constitutional rights, (Ams. 5 and 14), the Michigan Constitution, Art. I, Sec. 20 deprives an accused who pleads guilty (as did defendant) of an appeal of right. Ironically, said Art. I is entitled; "Declaration of Rights". In fact, it deprived petitioner of a right, to wit: the right of appeal.

The Art. III district court denied petitioner's habeas peti-

tion on the ground that it had no jurisdiction to decide same. Inconsistently (as well as erroneously), the Art. III appellate court denied petitioner a certificate of appealability on the ground of "no merit" in his habeas petition.

JURISDICTION

The Supreme Court has jurisdiction: (i) pursuant to U.S. C., Sec. 1254(1); and (ii) inherent jurisdiction to correct intolerable error on the part of the lower appellate Art. III court.

RELEVANT PROVISIONS INVOLVED

U.S. Const. 5th Amendment

. . . nor shall any person be deprived of . . . liberty . . . without due process of law.

U.S. Const. 6th Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . and to be informed of the nature and cause of the accusation . . . and to have the Assistance of Counsel in his defence.

U.S. Const. 14th Amendment

No State . . . shall . . . deprive any person of . . . liberty . . . without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Michigan Constitution

Art. I Sec. 20 Rights of accused in criminal proceedings

In every criminal prosecution, the accused shall have the right to a speedy and public trial . . . to have the assistance of counsel for his . . . defense; to have an appeal as a matter of right, except as provided by law an accused who pleads guilty or nolo contendere shall be by leave of the court;

MCL 750.356d(4)

Sec. 356d(4) A person who does any of the following is guilty of retail fraud in the third degree, a misdemeanor punishable by imprisonment for not more than 93 days or a fine . . . or both imprisonment and a fine:

(b) While a store is open to the public, steals property of the store that is offered for sale at a price of less than $200.00.

(5) A person who commits retail fraud in the third degree shall not be prosecuted under Sec. 360.

MCL 750.360

Sec. 360 Any person who shall commit the crime of larceny in any . . . store . . .shop . . warehouse . . . or any building used by the public shall be guilty of a felony.

STATEMENT OF THE CASE

Part I - Statement of Facts and Proceedings

On 1-28-02 petitioner (also herein "defendant") was

sentenced in the circuit court for the county of Oakland

(via a guilty plea) for the felony crime of larceny in a building (MCL 750.360); a copy of said sentence is attached. Within 21 days thereof defendant filed therein a petition for an emergency order granting him immediate release from incarceration unlawfully imposed. Attached to said petition was an Affirmation of Defendant setting forth the facts of the incident leading to his unlawful incarceration which show him to be a misdemeanant shoplifter who took property of a store while it was open for business to the public in violation of MCL 750.356d(4) entitled "Retail Fraud in Third Degree".

The following excerpt is from the Affirmation of Defendant that accompanied said petition:

> "... defendant, as affiant, says that while a store (Discount Tires of Rochester, MI) was open to the public he took two motor vehicle rims worth about $10.00 each from a stack of such rims. While he had them in his hands he heard a man say "put those down", whereupon he put them down. He told the man that he thought they were for the taking. The man told him that those rims are sold for scrap or refurbished and sold to customers at a discount compared to new rims. That was the end of the incident. Nothing came of it until, more than a month later another incident "resurrected" this taking. The police made this incident into a charge of larceny in a building though by the time they "visited" this incident, there were no rims for them to identify and tag."

Said petition was denied by the circuit court on 2-13-02. A copy of the circuit court order of 2-13-02 denying said petition for emergency order is attached.

Within 21 days thereof (on 2-19-02), defendant filed an

application for leave to appeal with the court of appeals

and requested immediate consideration thereof. On 3-5-02 the court of appeals denied leave to appeal (Preiding Judge Jansen would grant leave to appeal).

Within 21 days thereof (on 3-12-02), defendant filed an application for leave to appeal to the supreme court and requested immediate consideration thereof. On 4-29-02 the supreme court denied leave to appeal.

On 5-1-02 petitioner filed a petition in the federal district court for the eastern district of Michigan, southern division, for habeas corpus relief under the authority of 28 USC Sec. 2254. He showed that his state court felony conviction (and resulting sentence and incarceration in the Oakland County jail) was null and void by reason, inter alia, of being in violation of his due process rights under the United States Constitution. Defendant confesses that, though he was, in fact, guilty of shoplifting [a misdemeanor in violation of MCL 750.356d(4)], he was, nevertheless, deliberately over-charged by the county prosecutor (of Oakland County Michigan) and convicted in the circuit court for the same county (Oakland County) of the crime of larceny from a building (a felony in violation of MCL 750. 360). Due process mandated that controlling law in Michigan be observed which specifically barred him from being prosecuted, as he was, for a felony which he did not commit. His counsel in the state court was ineffective because he allowed said county prosecutor to deceive him into believing that his client was being properly charged.

Such controlling precedent included: (i) MCL 750.(4)(5) providing that a retail third shoplifter "shall not be prosecuted under Section 360 (larceny from a building)"; and (ii) People v Johnson 207 Mich. App. 264, 523 N.W. 2d 655 (1994) which says:

"Under the statute, the prosecutor was without

authority to charge defendant with larceny over over $100.00 (larceny in a building in this instance) where defendant appeared to have committed first-degree retail fraud (third degree retail fraud in this instance)".

Id. at page 656 of 523 N.W. 2d

The federal district court took it upon itself to "run" a defense for the defendants named in said habeas petition by controlling service of process upon them; specifically the court completely blocked any and all service of process upon the habeas defendants. On 5-15-02, the district court, via both order and judgment, dismissed said habeas petition and did so on a pretense, false to be sure, that it lacked "jurisdiction" because defendant (petitioner herein) was released from state custody on 4-8-02 which was prior to his filing of his habeas petition therein (in the federal district court). On 6-7-02, the district court denied defendant's 5-20-02 motion for reconsideration. On 6-19-02, petitioner filed a notice of appeal in the court of appeals for the sixth circuit. On 7-1-02, the district court denied a certificate of appealability. On 1-28-03, the court of appeals did likewise (denied a certificate of appealability). On 3-6-03, defendant filed a motion for reconsideration in the court of appeals, a suggestion for en banc rehearing and a motion for enlargement of time. On 3-17-03, the court of appeals entered an order denying leave to file said motion or said suggestion.

Part II - Argument

Petitioner submits the following in support of his application to the Supreme Court for reversal of the January 21, 2003 order of the lower appellate Art. III

court affirming the district court's order denying a certificate of appealability.

Though he be a misdemeanant shoplifter, defendant's due process and other rights under the United States constitution have been blatantly violated by his null and void conviction and sentence as a felon under "section 360" (MCL 750. 360) in manifest violation of the specific prohibition contained in MCL 750.356d(5) [and in violation of the controlling precedent interpreting the shoplifter statute].

The federal district court failed in its most fundamental function as an Art. III court by turning blind eyes to the following: (i) that its very own habeas petitioner (defendant in the state court system) is wholly innocent of the felony of which he was illegally convicted; (ii) that the state court system unlawfully denied him an appeal of right; (iii) that he had ineffective assistance of counsel; (iv) that the federal district court, indeed, had jurisdiction to entertain his habeas petition on its merits; (v) that it was just that it do so [deal with the merits thereof (his habeas petition)] under its inherent power, if necessary; and (vi) that the merits of the underlying state court case lie wholly with defendant being that such case is governed by the following authority, inter alia:

(i) MCL 750.356d(5);

(ii) People v Johnson 207 Mich. App. 264; 523 N.W. 2d 655 (1994); and

(iii) Blackledge v Perry 417 US 21, 94 S.Ct. 2098; 40 L. Ed 2d 628 (1974)

In the Johnson case, the defendant pled guilty; nevertheless, there is said what is applicable to the instant case:

"Under the statute, the prosecutor was without discretion to charge defendant with larceny over $100.00 (larceny in a building in this instance) where defendant appeared to have committed first-degree retail fraud." (third-degree retail fraud in this instance).

Id. at page 656 of 523 N. W. 655

In the Blackledge case, the defendant pled guilty; nevertheless, there is said what is applicable to the instant case:

"...the right that he asserts and that today we accept is the right not to be haled into court at all upon the felony charge. The very initiation of the proceedings against him in the Superior Court operated to deny him due process of law."

Id. at page 636 of 40 L Ed 2d 628

In the instant case, thesole court that treated the merits of defendant's constitutional claims is the state court of first instance that convicted him (the Oakland county circuit court). The two tiers of state appellate courts denied leave (without addressing the merits of defendant's claims). The federal district court did likewise in dismissing his habeas petition. The federal court of appeals did the same. The Oakland county circuit court failed to realize that the actions of the county prosecutor were deliberately:

(i) in defiance of law [MCL 750.d.(4)(5)];

(ii) in defiance of clear authority interpreting such law; [People v Johnson 207 Mich. App. 264, 523 N.W. 2d 655 (1994)] and;

(iii) in blatant violation of defendant's due process rights under both constitutions [Blackledge v Perry 417 U.S. 21; 94 S. Ct. 2098; 40 L. Ed. 2d 628 (1974)].

Said county prosecutor misled the Oakland county circuit court into committing, not mere error, but an abuse of power as a court of law. The Oakland county circuit court unlawfully proceeded, at the behest of the county prosecutor, with a false charge [the felony crime of larceny in a building (in violation of MCL 750.360)] against a misde-meanant shoplifter.

As was said in In re Mills, 135 U.S. 263, 34 L. Ed. 107 (1890):

> "This is not a case of mere error, but one in which the court below transcended its powers".
>
> Id. at page 270 of 135 U.S. 263

Said county prosecutor also misled defendant's own counsel into believing that his so charging defendant with a felony [of larceny in a building in violation of MCL 750.360)] was not at all a deliberate over-charge. Defendant's counsel's deception was so extensive and deep that he was not able to discern that, as a misdemeanant shoplifter, his client could not, as a matter of law, be guilty of the felony crime of larceny from a building (MCL 750. 360).

In the instant case, the two lower Art. III courts somehow lost in their breasts the collective consciousness of this Great Nation standing for opposition to tyranny in all its forms. Especially when it comes from a prosecutor who deliberately overcharges a defendant in a criminal case. Truth in lending is insisted upon nationally by the federal government, but truth in criminal prosecu-

tions is not so (insisted upon); this is the clear message promulgated by the two lower Art. III courts in the instant case (if such can be imagined?). Why was such (consciousness) not instilled therein (in the breasts of these Art. III judges)? Are not by those most admirable and famous words of our very own patriot inspiring enough? Patrick Henry's declamation defying tyranny can never be repeated too many times. Nor are they out of place in any forum. Especially since they are mere words to so many complacent or apathetic Americans. Sad to say, the Oakland county circuit court heard them spoken on defendant's behalf, but with deaf ears. The state court of appeals saw them written, but (save for Presiding Judge Jensen) with blind eyes. Likewise, the state supreme court. Likewise, the two lower Art. III courts.

"GIVE ME LIBERTY OR GIVE ME DEATH!"

The county prosecutor's deception was so smooth, clever and convincing as to deceive both defense counsel for defendant and the state circuit court. Too bad for defendant that the latter allowed itself to fall victim to the wiles of the county prosecutor and be deceived, seeing that it was the only court (the two Art. III courts below included) to pass upon the merits of defendant's state criminal case. Defendant's claim of ineffective assistance of counsel is a per se uncontestable proposition. It is impossible, as a matter of law, for defense counsel who is, himself, deceived by a prosecutor to perform adequately within the meaning of the Sixth Amendment guarantee of "Assistance of Counsel". Under no circumstances can it be said to be "reasonable" for defense counsel in a criminal case to be deceived (no matter how convincing is the prosecutor).

As a matter of law, it must be that a reasonably compe-

tent attorney would not have been so deceived as was defendant's counsel in the state criminal case.

> "A reasonable attorney would have tested (the validity of the illegal felony charge)"

Paraphrase of Northrop v Trippett 265 F 3rd 372 (6th Cir. 2001) at page 384.

That the ineffective performance resulted in prejudice follows, as night follows day, since defendant's conviction (and subsequent incarceration) for a deliberately over-charged (and illegal) offense is null and void.

There is no room in the instant case (of per se ineffective assistance of counsel) for judging the issue that usually arises:

> "but for counsel's unprofessional conduct, the result of the proceeding would have been different"

Strickland v Washington 466 U.S. 656, 694, 104 S. Ct. 2052, 80 L. Ed 2d 674 (1984)

The instant appeal involves fundamental federal constitutional issues (besides deprivation of due process and effective assistance of counsel) because defendant (petitioner herein) challenges the very jurisdiction of the state courts to prosecute him for the felony charge they formulated against him. As a misdemeanant shoplifter, the felony charge of larceny in a building (MCL 750. 360) of which he was ultimately convicted is per se in violation, inter alia, of his due process and equal protection rights under the Fourth and Fourteenth Amendments. And likewise in violation of his right to assistance of Counsel under the Sixth Amendment.

More than 60 years ago, the U.S. Supreme Court held that the Fourteenth Amendment cannot tolerate a state criminal conviction obtained by the knowing use of false evidence; Mooney v Holohan , 294 U.S. 103, 55 S. Ct. 340. A fortiori, the same Amendment cannot tolerate a state conviction obtained by the knowing use of a false charge (the instant case). There has been no deviation from that established principle. There can be no retreat from that principle here (in the instant case).

What possible explanation can there be for an Art. III court of first instance to determine it has no jurisdiction to hear the merits of defendant's habeas petition and for an Art. III appellate court to deny his right to appeal on the basis of no "merit" therein (in said habeas petition)?

The Art. III district court also departed from its role of neutrality as mentioned, supra, in blocking service of process upon the habeas defendants. On top of that, it is given (with the approval of the Art. III appellate court) authority to rule on petitioner's right of appeal (though it be a court of first instance). The "no merit" reason given by the Art. III appellate court was copied from that devised by the Art. III district court in denying defendant a certificate of appealability. How offensive to due process it is, to even think of such an arrangement being in place in, of all places, an Art. III court system. Allowing an Art. III court of first instance to decide the right of appeal of a habeas petitioner is the same as having a fox guard the chicken coop.

Defendant's challenge is good in law in spite of his plea of guilty as demonstrated, supra. The case of People v New 427 Mich. 482, 398 N.W. 2d 358 (1986) is authority for the proposition contended for by defendant

that defenses and rights that preclude the state from obtaining a valid conviction against a defendant are not waived by a guilty plea; see Blackledge v Perry, supra. To satisfy federal constitutional guarantees, the provision of the Michigan constitution purporting to take away from a criminal defendant who pleads guilty the right of appeal must be stricken as unconstitutional since it is applied across the board to all defendants (as was done in the instant case). It made not one iota of difference that defendant herein challenged the right of the state to "hale" him into court in the first place (in the words of the Blackledge case). In this instance, on an illegal charge which unlawful "haling" of him into court is, in and of itself, a tyrannical deprivation of the whole panoply of his federal constitutional rights. The state court of appeals was both without discretion to deny him leave and duty bound to grant him an appeal of right. Likewise, the state supreme court was duty bound to rectify the error of the court of appeals. Likewise, the federal district court was without discretion or authority to deny him habeas relief. Likewise, the federal court of appeals was without discretion or authority to deny him leave to appeal (when he had a clear right to appeal).

In respect to the district court's ruling of "no jurisdiction", its construction of Section 2254 is impermissibly narrow.

If upheld, it raises the question of the power of Congress to limit, in an appropriate case (as in the instant case), an Art. III court's power to issue a writ of habeas corpus.

In truth, Section 2254, when correctly construed, is a broad, not a narrow, grant of power.

In a proper case, such as the instant case, the word "previously" must be inserted into Section 2254 by necessary implication between "person" and "in" (just as "presently" is implied when it is narrowly construed). That this is obvious is shown by the exhaustion principle (exhaustion of state remedies), now codified 28 U.S.C. Sec. 2254(b).

As said in Clark v Nickerson D.C. Conn. 321 F.Supp. 415 (1971), a habeas petitioner must try the:

"state door first."

For non-exhaustion, dismissal is required. Slayton v Smith 404 U.S. 53, 92 S. Ct. 174, 30 L. Ed. 209 (1971).

See also the following other cases reiterating the necessity of exhausting state remedies before resorting to a federal district court via a habeas petition: Wade v Mayo 334 U.S. 672, 68 S. Ct. 1270 (1948) and O'Sullivan v Boerchel 556 U.S. 838, 144 L. Ed. 2d 1, 119 S. Ct. 1728 (1999).

The instant case is indistinguishable from Hensley v Municipal Court (1973) 411 U.S. 345, 36 L. Ed. 294, 93 S. Ct. 1571. In both cases, the petitioner was in active fulfillment of a federal requirement, to wit: exhausting his state remedies via direct appeal. In both cases, the respective sentence expired while the petitioners were so engaged (in exhausting their state remedies). In both cases, the filing in a federal district court was made on or about the date that the state court remedies were exhausted. {In the instant case, the Supreme Court of Michigan denied leave to appeal on April 29, 2002 and petitioner filed his habeas petition in the district court on May 2, 2002}.

The fact that in the one case (the Hensley case), the state court issued a stay and that in the other (the instant case), it did not, is a distinction which is altogether artificial. It cannot be a real one, insofar as concerns the power of an Art. III court to reach the merits of a habeas petition.

How possibly can the jurisdiction of an Art. III court be made to turn upon the issuance by a state court of a stay of sentence in the one case and the non-issuance in the other (the instant case)? The reality that is common to the two cases is that the respective sentence (stayed or not stayed) expired during the time that the two petitioners were in active fulfillment of a federal requirement (of exhausting their state remedies) and prior to their invoking the aid of a federal district court.

As argued previously, the jurisdiction of the district court (an Art. III court) attached at the very moment the petitioner was illegally restrained of his liberty "in violation of the Constitution . . . . of the United States" so as to empower it to rectify such wrong. Such jurisdiction is retained all during the time he was in active fulfillment of the federal requirement (that he first exhaust his state remedies). Then, within a reasonable time of his completion of such federal requirement (to so exhaust his state remedies), he filed his habeas petition in an Art. III court which is timely (in the sense that the "state corrections process" is not long over with). In such event, the district court cannot assert lack of jurisdiction in an attempt to justify its refusal to look at the merits thereof (as did the district court in the instant case).

A comparison, most brief, of two orders from the two lower Art. III courts is all that is required to demonstrate the radical wrong in their treatment of the instant case.

The earliest order (of 5-15-02 of the court of first instance) says, in effect, that it is prohibited from considering the merits of the habeas petition because:

> "This court lacks jurisdiction over the pending petition." (page 2, lines 2-3)

The later order (of 1-28-03 of the appellate court) says

> ". . . Fisher must make a substantial showing of the denial of a constitutional right." (page 1, lines 4-5)

They (the two orders) are self-contradictory. Being such (self-contradictory) they demonstrate that courts are not constituted to be what these two lower Art. III courts made themselves to be, to wit: engines of confusion.

The two lower Art. III courts denied the existence of their own inherent power and the very purpose thereof

Each of the two lower Art. III courts, being insensitive to injustice, failed in an absolute essential to its proper functioning as an Art. III court, to wit: to exercise its inherent power to see that a man's fundamental rights are protected in every case.

The two lower Art. III courts, together with the state courts of Michigan, need rehabilitation. In the case of State v Garcia 19 New Mexico 414 (1914), a decision insensitive to injustice was rendered influenced, in part, by a Michigan case (People v Smith 106 Mich. 431, 64 N.W. 200) in which was said:

> "The difficulty with this defense is that no such objection was made at trial. This objection . . . comes too late."

Id. at page 434 of 106 Mich.

Influenced by a federal case (Sykes v U.S. 204 Fed. 909, 123 C. C. A. 205), the New Mexico supreme court reversed itself, on rehearing, and rendered a decision sensitive to injustice saying:

> "The restrictions of the statute apply to the parties, not to this court."

It is submitted that the Supreme Court of the United States must act to effect such rehabilitation. The following is a repeat of what was urged, a year ago, upon the federal court of appeals in the instant case:

> "88 years later is not "too late" for a federal district court sitting in Michigan to rehabilitate the reputation of the judiciary of Michigan for sensitivity to the slightest injustice "in every case" (especially since a decision of a Michigan court played a significant role in the New Mexico Supreme Court's original decision insensitive to injustice)."

SUMMARY

Defendant has shown that he has been deprived: (i) of his right to due process and equal protection of the law (5th and 14th Ams.); (ii) his right to trial (including appeal) on a true charge (5th, 6th and 14th Ams.); and (iii) to be informed of the nature and cause of the accusation (6th and 14th Ams.) laid against him (falsely, in the instance). Defendant has also shown that he has been deprived: (iv) of adequate Assistance of Counsel (6th and 14th Ams.). Finally, defendant has shown that Art. I, Sec. 20 of the Michigan constitution, by refusing to make the necessary exception (obtaining in the instant case)

where the State's authority to charge is contested, must be stricken down as violative of the U.S. Constitution for depriving of rights (i) through (iii) above. A law which forces upon an accused a waiver he did not make is no law.

In the federal court system defendant did not fare better, though he invoked the aid of an Art. III court (the failure of which to assist is, in itself, a contradiction in reality crying to the Supreme Court for rectification). Here (in the federal court system), he met a denial of truth via manifest contradiction. In denying a certificate of appealability, both Art. III courts said (speaking of the merits of his habeas petition) that it did not meet a cerain threshold (a "substantial showing") to deserve an apeal. Yet, each was forbidden to do so (to so speak). Afer all, the court of first instance determined that it "lacks jurisdiction over the instant habeas petition" (i.e., it is incapable of considering its merits). {incidentally, in its elevation of form over substance, the district court discussed fancy concepts requiring "jurists of reason" (as though there are jurists without reason) to say what is or is not "debatable"}. Of what the appellate Art. III court was permitted to speak, it chose not to speak. But of what it was prohibited to speak, it spoke. Silence was impermissible; it was duty bound to speak loudly and to act emphatically to rectify the erroneous "no jurisdiction" ruling of the district court.

Not a single judge thereof (of the appellate Art. III court) proved himself sensitive to injustice, else would have been granted, defendant's motion for en banc rehearing instanter.

RELIEF

Petitioner in this instant habeas petition is entitled to is-

suance of this highest Art. III court's writ of certiorari and accompanying determination, without remand, that his state court conviction of a felony (and consequent sentence therefor) is absolutely null and void, that same is reversed and expunged from his criminal record and that he be shielded from its collateral consequences (including any sentence enhancement). In like manner, he is entitled to remand with instructions to the district court to accord him such other and further relief conforming to his federal constitutional rights as a highly privileged citizen of these incomparable United States (Thanks be to God). And, in addition, for a striking down of the offensive provision of the Michigan Constitution (Art. I, Sec. 20) repugnant to the United States Constitution for not discerning the right to challenge the State's authority (to obtain a valid conviction). We do not live under a dictator or other authoritative suppression or brainwashing, such as Islam (Thanks be to God). The right here deprived by Michigan is federally guaranteed (Thanks be to God). In this case, does Michigan not even realize that its "Declaration of Rights" deprives of a right?

What tragedy is modernism that, as an evil cancer, has choked the life out of Western (Roman) civilization, tearing apart its very fabric and exemplary values, rendering it unrecognizable.

Respectfully submitted,

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Dated this 18th day of August A.D. 2003

LIST OF DOCUMENTS IN APPENDIX

Document A

Court of first instance; Circuit Court for the County of Oakland; Judgment of Sentence, Commitment to Jail
Date: January 28, 2002

Document B

Same Court ; Order denying defendant's emergency motion for immediate release and dismissal of charges
Date: February 13, 2002

Document C

First tier of appellate courts; Court of Appeals (discretionary appeal) order denying application for leave to appeal
Date: March 5, 2002

Document D

Second tier of appellate courts; Supreme Court (discretionary appeal) order denying application for leave to appeal
Date: April 29, 2002

Document E

First tier of federal courts; District Court for the Eastern District of Michigan, Southern Division, order of summary dismissal of defendant's habeas petition
Date: May 15, 2002

Document F

Same court; Judgment (dismissing defendant's habeas petition)
Date: May 15, 2002

Document G

Same court; order denying petitioner's motion for reconsideration or rehearing (of dismissal of his habeas petition)
Date: June 7, 2002

Document H

Same court; order denying certificate of appealability
Date: July 1, 2002

Document I

Second tier of federal courts; Court of Appeals for the Sixth Circuit; order (denying certificate of appealability)
Date: January 21, 2003

Document J

Same court; order (denying motion to file a petition for en banc hearing instanter)
Date: January 21, 2003

DOCUMENT A

STATE OF MICHIGAN

Circuit for the County of Oakland

People of the State of Michigan

v No. 01-179506-FH

John N. Fisher

_____/

Judgment of sentence, Commitment to Jail

Convicted by guilty plea; Larceny in a Building;
Charge Code: MCL 750.360 (felony)

Represented by attorney, Donald E. McGinnis, P22796

On 01/28/02, defendant is sentenced to jail 90 days beginning 01/28/02.

Pay $60.00 victims rights fee.

Date 01/28/02 (SEAL)

Hon. Fred M. Mester, Circuit Court Judge

DOCUMENT B

STATE OF MICHIGAN

IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

People of the State of Michigan

v No. 01-179506-FH

John N. Fisher

_____/

ORDER/ RE: MOTION

This mater having come before the court on defendant's motion for immediate release and dismissal of charges and the court being fully advised in the premises,

IT IS HEREBY ORDERED that the motion is denied.

Date 02/13/02 (SEAL)

Hon. Fred M. Mester, Circuit Court Judge

DOCUMENT C

STATE OF MICHIGAN

IN THE COURT OF APPEALS

People of the State of Michigan

v No. 239,563

John N. Fisher

_____/

ORDER

The Court orders that the motion for immediate consideration is GRANTED.

The application for leave to appeal is DENIED for lack of merit in the grounds presented. The motion for peremptory reversal is denied.

Judge Jansen would grant the application for leave to appeal.

Date: Mar. 5, 2002 /s/ Presiding Judge

DOCUMENT D

STATE OF MICHIGAN

IN THE SUPREME COURT

People of the State of Michigan

v No. 121,151

John N. Fisher

_____/

ORDER

On order of the Court, the motion for immediate consideration is considered and it is GRANTED.

The application for leave to appeal is also considered and it is DENIED because we are not persuaded that the questions should be reviewed by this Court.

Date: April 29, 2002 /s/ Deputy Clerk Judge

DOCUMENT E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

John N. Fisher, petitioner

Case No. 02-71746

v Hon. John Corbett O'Meara

Oakland County Sheriff and
Michigan Attorney General, respondents
_____/

ORDER OF SUMMARY DISMISSAL

Petitioner John N. Fisher, through his attorney, has filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. Sec. 2254 challenging the constitutionality of his conviction for larceny in a building. Because petitioner fails to satisfy the "in custody" requirement of 28 U.S.C. Se. 2254(a), the Court shall dismiss the petition for lack of jurisdiction.

A federal district court has jurisdiction to entertain petitions for habeas corpus relief only from petitioners who are "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. 2254(a). The Supreme Court has interpreted the "in custody" language to require that "the habeas petitioner be 'in custody' under the conviction or sentence under attack at the time his petition is filed." Maleng v Cook 490 U.S. 488, 490-91 (1989).

In his habeas petition, petitioner states that the sentence for the conviction which he challenges expired on or about April 8, 2002. Petitioner did not file his habeas corpus petition until May 2, 2002. Thus at the time he filed the pending habeas petition, petitioner was no longer serving his sentence of imprisonment for the larceny in a building conviction.

Therefore, he was not "in custody pursuant to the judgment of a State court" at the time he filed his habeas petition. Id at 492. Accordingly, this Court lacks jurisdiction over the pending petition.

For the foregoing reasons, this Court determines that it lacks jurisdiction over the instant habeas petition. Accordingly, IT IS ORDERED that the petition for a writ of habeas corpus is DISMISSED for lack of jurisdiction.

Date: May 15, 2002

John Corbett O'Meara
United States District Judge

DOCUMENT F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

John N. Fisher, petitioner

Case No. 02-71746

v Hon. John Corbett O'Meara

Oakland County Sheriff and
Michigan Attorney General, respondents
_____/

JUDGMENT

IT IS ORDERED AND ADJUDGED that pursuant to this Court's Opinion and Order dated May 15, 2002, this cause of action is DISMISSED.

Dated at Detroit, Michigan this 15th day of May 2002.

David J. Weaver, Clerk of the Court

Approved: John Corbett O'Meara, U.S. District Judge

DOCUMENT G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

John N. Fisher, petitioner

Case No. 02-71746

v Hon. John Corbett O'Meara

Oakland County Sheriff and
Michigan Attorney General, respondents
_____/

ORDER DENYING PETITIONER'S MOTION FOR RE-CONSIDERATION OR REHEARING

Petitioner John N. Fisher, through his attorney, filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. Sec. 2254. On May 15, 2002, this Court dismissed the petition because petitioner failed to satisfy the "in custody" requirement of 28 U.S.C. Sec. 2254(a). Now before the Court is petitioner's motion for reconsideration or rehearing.

The local rules for the Eastern District of Michigan say that in a motion for reconsideration "the movant shall not only demonstrate a palpable defect by which the court and parties have been misled, but also show that a different disposition of the case must result from a correction thereof". L.R. 7.1(h)(3). A "palpable defect" is a defect which is obvious, clear, unmistakable, manifest or plain. Marketing Displays, Inc. v Traffix Devices, Inc. 971 F. Supp. 262, 278 (E.D. Mich. 1997), citing Webster's New World Dictionary 974 (3rd Ed. 1988).

Further, the Local Rules also provide that any "motions for rehearing or reconsideration which merely present the same issues ruled upon by the Court, either expressly or by reasonable implication, shall not be granted." L.R. 7.1(h)(3).

Petitioner has not demonstrate that a palpable defect occurred in this Court's decision dismissing his petition. Moreover, petitioner's arguments in support of reconsideration amount to nothing more than a disagreement with the Court's decision. A motion predicated on such an argument is an insufficient ground for a motion for reconsideration. L.R. 7.1(h)(3); see also Meekison v Ohio Department of Rehabilitation and Correction 181 F.R.D. 571, 572 (S. D. Ohio 1998). Therefore, this Court must deny petitioner's motion for reconsideration or rehearing for failing to demonstrate a palpable defect which, if corrected, would result in a different disposition of the case.

Accordingly, IT IS ORDERED that petitioner's motion for reconsideration or rehearing is DENIED.

Date: June 7, 2002

John Corbett O'Meara
United States District Judge

DOCUMENT H

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

John N. Fisher, petitioner

Case No. 02-71746

v Hon. John Corbett O'Meara

Oakland County Sheriff and
Michigan Attorney General, respondents
_____/

ORDER DENYING CERTIFICATE OF APPEALABILITY

Petitioner John N. Fisher, through his attorney, filed a *pro se* petition for a writ of habeas corpus. On May 15, 2002, this Court issued an Order for Summary Dismissal dismissing the petition because the Court lacked jurisdiction where petitioner failed to satisfy the "in custody" requirement of 28 U.S.C. Sec. 2254(a). Petitioner filed a motion for reconsideration which was denied. See Order Denying Motion for Reconsideration filed June 7, 2002. Thereafter, petitioner filed a Notice of Appeal.

Before petitioner may appeal the Court's dispositive decision denying his petition, a certificate of appealability must issue. 28 U.S.C. Sec. 2253(c)(1)(A); Fed. R. App. 22(b). The Court must issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue.

28 U.S.C. Sec. 2253(c)(3)(3); Fed. R. App. P. 22(b); In re Certificates of Appealability 106 Fed, 3d 1306, 1307 (6th Cir. 1997).

A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. Sec. 2253(c)(2). The substantial showing is satisfied when a petitioner demonstrates "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v McDaniel 529 U.S. 473, 484 (2000). When a prisoner's habeas corpus petition was denied on procedural grounds, a certificate of appealability "should issue . . . if the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling" Id.

Petitioner's Notice of Appeal does not state why a certificate of appealability should issue under Slack. Under these circumstances, where petitioner does not provide a reasoned explanation why reasonable jurists would debate the Court's conclusions, the Court relies on all of the reasons stated in the Orders of May 15, 2002 and June 7, 2002 and shall deny a certificate of appealability.

Accordingly, IT IS ORDRED that a certificate of appealability is DENIED.

Date: July 1, 2002

John Corbett O'Meara
United States District Judge

DOCUMENT I

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

John N. Fisher, petitioner-appellant

v Case No. 02 1819

Oakland County Sheriff and
Michigan Attorney General, respondents-appellees

/

ORDER (filed Jan. 21, 2003)

Before: MARTIN, Chief Circuit Judge

John Newman Fisher appeals a district court judgment that denied his habeas corpus petition filed under 28 U.S.C. Sec. 2254. He has applied for a certificate of appealbility under Fed. R. App. P. 22(b).

To obtain a certificate of appealability, Fisher must make a substantial showing of the denial of a constitutional right. See 28 U.S.C. Sec. 2253(c)(2). An independent review of the record indicates that he had not met that burden here because he did not meet the custody requirement of 28 U.S.C. Sec. 2254(b) when his petition was filed. See Maleng v Cook 490 U. S. 488, 490-92 (1989).

Accordingly, the application for a certificate of appealabilty is denied for the reasons that were well-stated by the district court.

ENTERED BY ORDER OF THE COURT, /s/ Clerk

DOCUMENT J

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

John N. Fisher, petitioner-appellant

v Case No. 02 1819

Oakland County Sheriff and
Michigan Attorney General, respondents-appellees

/

ORDER (filed Mar. 17, 2003)

Upon consideration of appellant's motion to file a petition for en banc rehearing instanter,

It is ORDERED that the motion be and it hereby is DENIED.

The petition submitted with the motion is not accepted for filing.

ENTERED BY ORDER OF THE COURT, /s/ Clerk